

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael Rosenbauer
Application Number: 10/539,994
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Group Art Unit: 1792
Examiner: Eric Wayne Golightly
Title: METHOD AND DEVICE FOR TESTING OBJECTS WITH
AT LEAST ONE TREATMENT AGENT IN A HOUSEHOLD
DEVICE, SAID HOUSEHOLD DEVICE, ASSOCIATED
PACKAGING AND A DOSING DEVICE

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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellant hereby files an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

Table of Contents

(1) REAL PARTY IN INTEREST	3
(2) RELATED APPEALS AND INTERFERENCES	3
(3) STATUS OF CLAIMS	3
(4) STATUS OF AMENDMENTS	3
(5) SUMMARY OF CLAIMED SUBJECT MATTER.....	3
(6) GROUND OF REJECTION TO BE REVIEWED ON APPEAL.....	5
(7) ARGUMENT	5
(8) CONCLUSION	11
CLAIMS APPENDIX	12
EVIDENCE APPENDIX	17
RELATED PROCEEDINGS APPENDIX.....	18

(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1 - 19 and 22 are cancelled. Claims 23 - 42 are withdrawn. Claims 20 and 21 are pending in the present application and have been finally rejected. The final rejections of claims 20 and 21 are being appealed. Claim 20 is independent.

(4) STATUS OF AMENDMENTS

In response to the Final Rejection dated July 7, 2009, an Amendment was received in the US Patent Office on October 5, 2009 and a Notice of Appeal was received in the US Patent Office on October 28, 2009. An Advisory Action mailed October 21, 2009 indicated that the final rejections of claims 20 and 21 set forth in the Final Rejection dated July 7, 2009 were continued. No further amendments have been filed.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 20

A first exemplary aspect of the present invention, as defined by, for example, independent claim 20, is directed to a method for treating objects with at least one treatment agent in a household device. The method includes operating a first part of an

identification system to identify data of a second part of the identification system, the data of the second part of the identification system comprising information on a dosing device operable to dose the treatment agent, and the data of the second part of the identification system being associated with a packaging for the dosing device, the operating for identifying the second part of the identification system (Page 4, line 34; Page 5, line 10; and Figures 1 - 3). The method recited in independent claim 20 also includes adapting one of a treatment of objects by the household device and a dosing of the treatment agent based upon the identified data (Page 5, lines 8 - 10 and Figures 1 - 3).

A household appliance 20 which is a dishwasher in the exemplary embodiment shown but alternatively can also be a washing machine, has as a first part of an identification system a reader 21 for transponder chips (Page 10, lines 1 - 8 and Figure 2). The household appliance 20 also includes a dosing device 22 for actively dosing the treatment agent 23 which as the second part of the identification system comprises a transponder chip 24 with information on the type of dosing device 22 (Page 10, lines 8 - 12 and Figure 2). The household device 20 has a receiving container 25 which receives objects, such as, for example, crockery in the case of a dishwasher or laundry in the case of a washing machine, for a treatment such as cleaning, for example. The receiving container 25 contains the dosing device 22 for actively dosing the treatment agent which comprises a dispensing device 26 which can be actively opened and closed by the dosing device 22 to release the treatment agent 23 in a dosed fashion (Page 10, lines 14 - 22 and Figure 2). The household device 20 additionally has a programme control device 27 - a programme controller, which controls the treatment and which is connected to the reader 21 so that the information on the type of dosing device 22 read out by the reader 21 is available to the programme control device 27 (Page 10, lines 24 - 29 and Figure 2).

Conventional dishwashers and washing machines (household devices for treating objects) dispense a treatment agent merely upon a predetermined position within a treatment cycle and/or upon reaching a predetermined condition inside the device. These devices suffer from several problems. For instance, these devices do not ensure that conditions within the device are advantageous after the treatment agent

is released. Therefore, the treatment agent may become inefficient for lack of appropriate conditions within the device. The present invention provides a method that controls the treatment of the objects to optimize ambient conditions for dispensing the treatment agent from the dosing device at a predetermined time based upon the selected data relating to the dosing device and, in this manner, the inventive method improves the efficiency of the treatment agent.

(6) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 20 and 21 are unpatentable under 35 U.S.C. §103(a) over Zucholl DE 100 39 408 in view of WO 00/32864 to Mourad?

(7) ARGUMENT

A) The Rejection of Claims 20 and 21 as Unpatentable Under 35 U.S.C. §103(a) Over Zucholl DE 100 39 408 in View of WO 00/32864 to Mourad is Not a Proper Rejection

In the Final Office Action, claims 20 and 21 are rejected as unpatentable under 35 U.S.C. §103(a) over Zucholl DE 100 39 408 in view of WO 00/32864 to Mourad. The Examiner asserts that:

"Regarding claim 20, Zucholl teaches a method for treating objects with at least one treatment agent in a household device (EPO machine translation of Zucholl detailed description, paragraph beginning "Object [sic] of the invention"), comprising: operating a bar code reader, computer and controller (drawing, ref. 6, 3 and 7), or first part of an identification system, to identify data of a second part of the identification system, the data of the second part of the identification system being associated with a packaging (id., paragraph beginning "In an other [sic] particularly favourable embodiment a reading"); and adapting a treatment of objects by the household device based upon the identified data (id., paragraphs beginning "An apparatus become").

Zucholl does not explicitly teach the data of the second part of the identification system comprises information on a dosing device. Mourad teaches a method of controlling a washing machine (abstract) and discloses operating a washing machine control unit (EPO machine translation of Mourad detailed description, paragraph beginning "Washing machine control") to identify data of an external datum carrier (id, paragraphs beginning "The object is solved by a method" and "The substantial information"), or second part of the identification system, that comprises information on a dosing device (id, paragraphs beginning "The parts of the wash program", "The detergent dosage represents", "On the basis of these ... measured parameters" and "By this 'division of responsibilities'"). The inclusion of the dosing device information is disclosed as advantageously reducing the need for detergent producers to be concerned with the characteristics of dosing devices (id, paragraph beginning "By this 'division of responsibilities'"). It would have been obvious to one of ordinary skill in the art at the time of the invention to include information on a dosing device operable to dose the treatment agent as per the method of the Mourad teaching in the method as per the Zucholl teaching in order to reduce the need for detergent producers to be concerned with the characteristics of dosing devices. Further, the skilled artisan would have found it obvious to that the information be associated with the packaging of the dosing device to enhance operator and bar code reading of the information."

The Examiner further asserts, in the Advisory Action dated October 21, 2009, that:

"It is Mourad, not Zucholl, which is relied upon to provide the feature of using dosing device data (see Office action mailed 7/7/2009 at page 3, second paragraph, citing EPO machine translation of Mourad at, inter alia, paragraphs beginning, "The parts of the wash program" and "The detergent dosage represents"). Further, it is Zucholl, not Mourad, which is relied upon to provide the feature of packaging of a dosing device (see Office action mailed 7/7/2009 at page 3, first paragraph, citing EPO machine translation of Zucholl detailed description, paragraph beginning "In an other [sic] particularly favourable embodiment a reading"); and ... as discussed in Office action mailed 7/7/2009 at page 4, first

paragraph, one of the ordinary skill in the art at the time of the invention would have found it obvious that the information be associated with the packaging of the dosing device in order to enhance operator and bar code reading of the information."

(Page 1, lines 44 - 48, EPO machine translation of Zucholl DE 100 39 408)

The Examiner asserts that Zucholl DE '408 teaches a method for treating objects with at least one treatment agent in a household device comprising operating a bar code reader, computer, and controller, or, in other words, a first part of an identification system, to identify data of a second part of the identification system. Namely, the Examiner asserts that Zucholl DE 100 39 408 discloses:

"An apparatus becomes corresponding the detection at least a parameter of the used detergent and/or with a household machine to cleaning subject-matters, in particular a washing machine or a dishwashing machine. Cleaner provided. With the help of such a parameter collection for example a better dosage or if necessary also an influencing control can take place on the programme flow of the household machine, so that a better exploitation of the detergent and/or. Cleaner with improved cleaning result possible becomes."

(Page 1, lines 16 - 20, EPO machine translation of Zucholl DE 100 39 408) and the Examiner asserts that Zucholl DE 100 39 408 discloses:

"In an other particularly favourable embodiment a reading unit becomes the detection of machine-readable information carriers on the packaging or the detergent and/or. the cleaner provided. Such a reading unit can for example in form of a bar code reader, a transponder reader etc. formed become. It could become also a Kaertenlesgeraet for chip cards or magnetic cards at the washing machine according to invention provided, in order to select the packaging accompanying chip or magnetic cards."

The Examiner notes, however, that Zucholl DE '408 does not explicitly teach the data of the second part of the identification system comprises information on a dosing device. Nonetheless, according to a further assertion of the Examiner, WO 00/32864 to Mourad teaches a method of controlling a washing machine and discloses operating a

washing machine control unit to identify data of an external datum carrier or, in other words, data of a second part of the identification system, that comprises information on a dosing device.

According to the Examiner, it would have been obvious to one of ordinary skill in the art at the time of the invention to include information on a dosing device operable to dose the treatment agent as per the method of WO 00/32864 to Mourad in the respective method of Zucholl DE '408 in order to reduce the need for detergent producers to be concerned with the characteristics of dosing devices. Moreover, according to the Examiner, "the skilled artisan would have found it obvious to that the information be associated with the packaging of the dosing device to enhance operator and bar code reading of the information."

Appellant respectfully submits that such a conclusory statement is insufficient to provide a *prima facie* case for obviousness because the Examiner fails to provide an adequate rationale for combining the art as required by *KSR International v. Teleflex Inc.*, 82 USPQ2d 1385 (2007).

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in *KSR*.)

The Examiner does not provide any articulated reasoning with a rationale underpinning to support a legal conclusion of obviousness. Instead, the Examiner seizes upon the mere fact that Zucholl DE 100 39 408 and WO 00/32864 to Mourad each discloses influencing or controlling a washing machine program based upon, respectively, information read by a device for reading information on a package of a treatment agent or information on an external data carrier and from this unreasonably extrapolates to a conclusion that these two prior art references suggest the desirability of influencing or controlling a washing machine program based upon information relating to a packaging of a dosing device. The Examiner relies upon this unreasonable extrapolation to support an assertion that the two references meet a limitation recited in claim 20 of the present application - to wit, the limitation in claim 20 of "...the data of the

second part of the identification system being associated with a packaging for the dosing device.”

The Examiner fails to point to any disclosure or suggestion in Zucholl DE 100 39 408 or WO 00/32864 to Mourad that one of ordinary skill in the art should provide, look to, or control dosing operations in an appliance based upon, information located on a packaging of a dosing device. The portions of WO 00/32864 to Mourad pointed to by the Examiner - namely, paragraphs beginning “The parts of the wash program,” “The detergent dosage represents,” “On the basis of these ... measured parameters” and “By this division of responsibilities” - simply cannot be characterized as referring to information located on a packaging of a dosing device.

Thus, the Examiner fails to provide any explanation as to why a skilled artisan would have found it obvious to associate information concerning a dosing device with the packaging of the dosing device. It is clear that none of the prior art hints at, suggests, or discloses such an approach. In spite of the assertion by the Examiner, WO 00/32864 to Mourad does not appear to hint at or suggest such an approach, let alone disclose such an approach. The reference to the portion of the EPO machine translation of WO 00/32864 to Mourad reading as follows: “By this ‘division of responsibilities’ the washing machine manufacturer does not have to be concerned with characteristics of the detergent, turned around the detergent producer not with characteristics of dosing devices” does not provide any hint or suggestion that a washing machine manufacturer would be taught to associate information concerning a dosing device with the packaging of the dosing device. The present application discloses, in contrast, that a chip card 6’, for example, can be loosely appended to a dosing device 5 so that the chip card 6’ can be inserted into a chip card reader 2’. Also, the present application notes that a dosing device can be configured such that it can be inserted into a household device for treating object with the dosing device comprising the second part of the identification system. This feature of the present application is comprised in the method recited in claim 20 of the present application, wherein “the step of operating ..., wherein the data of the second part of the identification system comprises information on a dosing device ... and the data of the second part of the identification system is associated with a packaging for the dosing device...”

WO 00/32864 to Mourad, it is submitted, does not teach or disclose to one of skill in the art to associate information concerning a dosing device with the packaging of the dosing device in any way, let alone to associate information concerning a dosing device with the packaging of the dosing device in a manner such that, in accordance with the present invention, a first part of an identification system identifies data of a second part of the identification system, wherein this data is associated with a packaging of the dosing device. Furthermore, the Examiner concedes that Zucholl DE '408 does not teach that data of a second part of an identification system comprises information on a dosing device, let alone teach that data of a second part of an identification system comprises information on a packaging of a dosing device. Thus, neither Zucholl DE '408 nor WO 00/32864 to Mourad suggests or supports the respective combination as asserted by the Examiner.

In view of the fact that no articulated reasoning has been set forth for combining Zucholl DE 100 39 408 and WO 00/32864 to Mourad to arrive at the claimed invention, it must be acknowledged that the basis for such a combination could only have come from using Appellant's own invention and disclosure as a template and through hindsight reconstruction based upon Appellant's disclosure and such is not permitted. It is respectfully believed that the evidence adduced is insufficient to establish a *prima facie* case of obviousness with respect to claims 20 and 21 of the present application.

Moreover, even if one of ordinary skill in the art were taught to selectively modify the respective method of Zucholl DE '408 with select steps of the method of WO 00/32864 to Mourad, which Appellant submits is not the case, modifying the respective method of Zucholl DE '408 with selected steps of the method of WO 00/32864 to Mourad would result in a method that still falls short of the method recited in claims 20 and 21 of the present invention. The reason for the shortfall of the proposed modified method of Zucholl DE '408 is that neither Zucholl DE '408 nor WO 00/32864 to Mourad teaches or discloses the steps of the method for treating objects with at least one treatment agent in a household device recited in claims 20 and 21 of the present invention. For example, it can be seen that Zucholl DE '408 merely discloses a computer that controls the machine to provide an amount of product based upon product bar code reading. Zucholl DE '408 does not teach or suggest any approach

concerning dosing device data at all. WO 00/32864 to Mourad is of no help in overcoming the shortcomings of Zucholl DE '408 as WO 00/32864 to Mourad merely discloses controlling a washing program according to the read information and does not even mention a packaging of a dosing device, let alone a packaging of a dosing device that is configured to provide information concerning the dosing device that can be identified by a (first) part of an identification system. Thus, it is respectfully requested that the rejection of claims 20 and 21 as unpatentable under 35 U.S.C. §103(a) over Zucholl DE 100 39 408 in view of WO 00/32864 to Mourad be withdrawn.

(8) CONCLUSION

In view of the foregoing discussion, Appellant respectfully requests reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

1–19 (Cancelled)

20. (Rejected) A method for treating objects with at least one treatment agent in a household device, comprising:

operating a first part of an identification system to identify data of a second part of the identification system, the data of the second part of the identification system comprising information on a dosing device operable to dose the treatment agent, and the data of the second part of the identification system being associated with a packaging for the dosing device, the operating for identifying the second part of the identification system; and

adapting one of a treatment of objects by the household device and a dosing of the treatment agent based upon the identified data.

21. (Rejected) The method of claim 20, wherein adapting one of the treatment of objects by the household device and the dosing of the treatment agent comprises adapting parameters of a treatment control program to the information.

22. (Cancelled)

23. (Withdrawn) An arrangement for treating objects with a treatment agent in a household device, comprising:

a household device for treating objects with the treatment agent;

a packaging for a dosing

device for dosing the treatment agent;

a first part of an identification system that identifies data of a second part of the identification system, the data of the second part of the identification system comprising information on the dosing device, and the data of the second part of the identification system being associated with a packaging for the dosing device; and

means for adapting one of the treatment of objects by the household device and the dosing of the treatment agent based upon the identified data.

24. (Withdrawn) The arrangement of claim 23, wherein the data of the second part of the identification system comprises information on a dosing parameter of the dosing device.

25. (Withdrawn) The arrangement of claim 23, wherein the household device includes a transmitting unit that transmits a control signal to a receiving unit of the dosing device.

26. (Withdrawn) The arrangement of claim 23, wherein the identification system comprises a non-contact identification system.

27. (Withdrawn) The arrangement of claim 23, wherein the identification system comprises a barcode system with the first part of the identification system having a barcode scanner and the second part of the identification system having a barcode.

28. (Withdrawn) The arrangement of claim 23, wherein the identification system comprises a radio-based identification system.

29. (Withdrawn) The arrangement of claim 23, wherein the first part of the identification system comprises a transponder chip reader and the second part of the identification system includes a transponder chip.

30. (Withdrawn) The arrangement of claim 23, wherein the first part of the identification system is a chip card reader and the second part of the identification system includes a chip card that can be inserted into the chip card reader for the identification of data carried on the chip card by the chip card reader.

31. (Withdrawn) The arrangement of claim 23, wherein the identification system comprises an electronic identification system with the first part of the identification system having a magnetic strip reader and the second part of the identification system having a magnetic strip.

32. (Withdrawn) A household device for treating objects with a treatment agent, comprising:

a first part of an identification system to identify data of a second part of the identification system, the data of the second part of the identification system comprising information on a dosing parameter of a dosing device, and the data of the second part of the identification system being associated with of a packaging for the dosing device; and

means for adapting one of a treatment of objects by the household device and a dosing of the treatment agent based upon the identified data.

33. (Withdrawn) The household device of claim 32, wherein the household device comprises one of a dishwasher and a washing machine.

34. (Withdrawn) A packaging for a treatment agent that is to be released in a dosed manner by a dosing device in a household device, the packaging comprising:

a second part of an identification system having data that is to be identified by a first part of the identification system, the data of the second part of the identification system comprising information on the dosing device.

35. (Withdrawn) The packaging of claim 34, wherein the treatment agent comprises one of a dishwashing treatment agent and a washing machine treatment agent.

36. (Withdrawn) A dosing device for dosing a treatment agent a household device operable to treat objects disposed in the household device, the dosing device comprising:

a second part of an identification system having data that is to be identified by a first part of the identification system, the data of the second part of the identification system comprising information on the dosing device.

37. (Withdrawn) The dosing device of claim 36, wherein the data of the second part of the identification system includes information concerning dosing parameters of the dosing device.

38. (Withdrawn) The dosing device of claim 36, wherein the dosing device is operable in one of a dishwasher and a washing machine.

39. (Withdrawn) A household device for treating objects comprising:
a dosing device for dispensing a treatment agent;

a first readable memory storing first data regarding one of a composition of the treatment agent and an active parameter for the treatment agent;

a second readable memory storing second data regarding the dosing device;

a reader in communication with the first readable memory and the second readable memory; and

a program controller that controls the treatment of the objects to optimize ambient conditions for dispensing the treatment agent from the dosing device at a predetermined time based upon the first data and the second data.

40. (Withdrawn) The device of claim 39, wherein the program controller further controls the treatment of objects after the dosing device dispenses the treatment agent to optimize the effectiveness of the treatment agent based upon the first data and the second data.

41. (Withdrawn) A household device for treating objects, comprising:
a dosing device for dispensing a treatment agent;
a first readable memory storing first data regarding one of a composition for the treatment agent and an active parameter for the treatment agent;
a second readable memory storing second data regarding the dosing device;
a reader in communication with the first readable memory and the second readable memory; and
a program controller that controls the time of dispensing of the treatment agent from the dosing device during the treatment of the objects to optimize the effectiveness of the treatment agent based upon the first data and the second data.

42. (Withdrawn) The household device of claim 32, wherein the means for adapting is operable to control a time parameter and a quantity parameter of a dosing of the treatment agent based upon the identified data.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None